

SENATE BILL NO. 478

INTRODUCED BY GALLUS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN EMERGENCY ADMINISTRATIVE RULE MAY NOT BE USED TO IMPLEMENT AN ADMINISTRATIVE BUDGET REDUCTION; SPECIFICALLY INCLUDING PROVIDERS OF SERVICES UNDER CONTRACTS WITH THE STATE AS AN AFFECTED CLASS OF PERSONS FOR PURPOSES OF A STATEMENT OF THE PROBABLE ECONOMIC IMPACT OF A RULE ON AFFECTED CLASSES OF PERSONS; AMENDING SECTIONS 2-4-303 AND 2-4-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-303, MCA, is amended to read:

"2-4-303. Emergency or temporary rules. (1) (a) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review upon petition by any person. The matter must be set for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character. The sufficiency of the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.

1 **(b) An emergency rule may not be used to implement an administrative budget reduction.**

2 (2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or
3 amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year,
4 upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the
5 secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule.
6 The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under
7 2-4-302 is not precluded during the period that the temporary rule is effective."
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9 **Section 2.** Section 2-4-405, MCA, is amended to read:

10 **"2-4-405. Economic impact statement.** (1) Upon written request of the appropriate administrative rule
11 review committee based upon the affirmative request of a majority of the members of the committee at an open
12 meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal
13 of a rule as proposed. The agency shall also prepare a statement upon receipt by the agency or the committee
14 of a written request for a statement made by at least 15 legislators. If the request is received by the committee,
15 the committee shall give the agency a copy of the request, and if the request is received by the agency, the
16 agency shall give the committee a copy of the request. As an alternative, the committee may, by contract,
17 prepare the estimate. Except to the extent that the request expressly waives any one or more of the following,
18 the requested statement must include and the statement prepared by the committee may include:

19 (a) a description of the classes of persons who will be affected by the proposed rule, including classes
20 that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

21 (b) a description of the probable economic impact of the proposed rule upon affected classes of
22 persons, including but not limited to providers of services under contracts with the state, and quantifying, to the
23 extent practicable, that impact;

24 (c) the probable costs to the agency and to any other agency of the implementation and enforcement
25 of the proposed rule and any anticipated effect on state revenue;

26 (d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of
27 inaction;

28 (e) an analysis that determines whether there are less costly or less intrusive methods for achieving the
29 purpose of the proposed rule;

30 (f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were

1 seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

2 (g) a determination as to whether the proposed rule represents an efficient allocation of public and
3 private resources; and

4 (h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based
5 and an explanation of how the data was gathered.

6 (2) A request to an agency for a statement or a decision to contract for the preparation of a statement
7 must be made prior to the final agency action on the rule. The statement must be filed with the appropriate
8 administrative rule review committee within 3 months of the request or decision. A request or decision for an
9 economic impact statement may be withdrawn at any time.

10 (3) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement.
11 If the committee determines that the statement is insufficient, the committee may return it to the agency or other
12 person who prepared the statement and request that corrections or amendments be made. If the committee
13 determines that the statement is sufficient, a notice, including a summary of the statement and indicating where
14 a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register
15 by the agency preparing the statement or by the committee, if the statement is prepared under contract by the
16 committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking
17 proceedings.

18 (4) This section does not apply to rulemaking pursuant to 2-4-303.

19 (5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result
20 of the inaccuracy or inadequacy of a statement required under this section.

21 (6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the
22 factors listed in this section satisfies the provisions of this section."

23
24 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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